

## **The Catholic Church, Sex and Sexuality in Latin America: Beyond the Public/Private Distinction**

Isabel C. Jaramillo Sierra<sup>1</sup>

Centering the Catholic Church as an actor in the legal construction of sex and sexuality in Latin America might seem an anachronism given the recent scandals in which the Church has been involved,<sup>2</sup> the introduction of clauses establishing the separation of Church and State in most Latin American constitutions, and the Church's own complaints about how it has lost influence and ability to inspire devotion among Latin Americans. However, those who have been involved in the reform of rules affecting sexual and reproductive rights in the region, and a

---

<sup>1</sup> Profesora Asociada, Facultad de Derecho, Universidad de los Andes; Abogada (con honores), Facultad de Derecho, Universidad de los Andes (1996); SJD Harvard Law School (2007)

<sup>2</sup> The Catholic Church has been involved in two major scandals in the last decade. In 2002, and until today, it was accused and considered liable for damages sustained by individuals sexually abused by priests in cases in which Church authorities knew of the wrongful actions and failed to properly discipline the priests. The sex abuse scandal in the US started in February 2002 in Massachusetts with a headline in the Boston Globe accusing Catholic authorities of failing to investigate and punish acts of sex abuse by priests (for an overview of the sex abuse scandals and the coverage by the Boston Globe see: <http://www.boston.com/globe/spotlight/abuse/overview/>). The Catholic Church not only has had to pay damages amounting to hundreds of millions of dollars, but also has approved a zero tolerance policy regarding sexual abuse (approved in the Conference of Bishops held in Dallas in June 2002). The most comprehensive report regarding sexual abuse by priests in the United States, known as the *John Jay Report* may be retrieved from the Conference of Bishops webpage: [http://www.bishop-accountability.org/reports/2004\\_02\\_27\\_JohnJay/](http://www.bishop-accountability.org/reports/2004_02_27_JohnJay/). A report regarding the region of Fern in Ireland was also commissioned and became known as the *Fern Report*. It may be retrieved from: <http://www.bishop-accountability.org/ferns/>. In 2009, a majority of Catholics spoke up against the Vatican's decision to repeal the excommunications of the four Lefebvian Bishops, including the holocaust denier Richard Williamson. Pope Benedict XVI had to write an open letter to the Bishops of the Catholic Church explaining his decision. The letter may be retrieved from: <http://media.npr.org/documents/2009/mar/pope.pdf>. The fact that the Pope had to write this letter was interpreted as a clear sign of fragmentation inside the Catholic Church and of the isolation of the Pope himself. See <http://www.npr.org/templates/story/story.php?storyId=101789591>. Also, Juan Camilo Maldonado, "El timonel de Benedicto" en *El Espectador*, febrero 6 de 2009 (explaining how the Colombian Cardinal, Darío Castrillón, ended up being responsible for the decision); "El Papa condena de nuevo el Holocausto y anuncia que viajará a Tierra Santa" en *Espectador*, febrero 12 de 2009; "El Papa explica por qué anuló la excomunión del obispo que niega el holocausto" en *El Clarín*, marzo 11 de 2009 (pointing out how the Pope emphasized in his letter that he was hurt by the vehemence of the accusations against him); "Alemanes se suman a críticas contra Benedicto XVI" en *La República*, febrero 4 de 2009; "Merkel critica a Benedicto XVI por caso de obispo Lefebvista" en *El Mercurio*, febrero 4 de 2009, among many others.

considerable number of scholars studying these reforms, have coincided in pointing to the Catholic Church as the most important obstacle for achieving greater sex and sexual equality.<sup>3</sup>

In this paper I propose that when assessing the role of the Catholic Church in shaping sex and sexuality we tend to pay too much attention to how it intervenes to prevent the change of repressive legal rules, and too little attention to the way in which law enables the Church's overwhelming presence in the spaces in which sex and sexuality are negotiated daily. And, in this sense, that we might be trusting putting too much trust in the mechanism of the public/private distinction to handle the impasses we are reaching in achieving greater sex and sexuality equality. Firstly because when presenting the possibility of obtaining this goal in terms of the liberalization of repressive rules, we foreground the formal aspects of the Catholic Church as an institution, and privilege privacy and autonomy as objectives in ways that favor the Catholic demand to balance sexual and reproductive rights and other rights. Secondly because given the conditions of religious homogeneity and Catholic penetration in the provision of basic services, the guarantee of freedom of religion and separation of Church and State only helps to further shield Catholic privilege from scrutiny.

---

<sup>3</sup> In this sense, Diego Freedman points out: "the defense of liberalism guarantees a neutral political power in which women do not find their individual freedom conditioned by the rules of religious doctrines". Diego Freedman, "Estado laico o Estado liberal" en *La Trampa de la Moral Única*, Campaña por la Convención de los Derechos Sexuales y Reproductivos, Campaña por el 28 de septiembre y Tu Boca es Fundamental contra los Fundamentalismos, 2005, pp. 36-55. Also Juan Marco Vaggione: "The Church, without doubts, constitutes the greatest obstacle to the liberalization of gender and sexuality in Latin America". Juan Marco Vaggione, "Entre Disidentes y Reactivos: Desandando las fronteras entre lo Secular y lo Religioso" in *ibid*, pp. 57-75. Julieta Lemaitre in an earlier version of the paper submitted for this event has also argued that the Catholic Church has intervened in political processes regarding sexual and reproductive rights in many countries in the region and asks "¿How should we react before an evident intervention of the Church as an actor with opinions and political participation". Julieta Lemaitre, "La Iglesia Católica es un actor político ilegítimo en materia de sexualidad y reproducción... Respuesta a Juan Marco Vaggione" (unpublished manuscript on hold with the author) Also Guillermo Nugent, "El Orden Tutelar: para entender el conflicto entre sexualidad y políticas públicas en América Latina" in *ibid*, pp. 6-36. Mala Htun, moreover, has argued that the liberalization of legislation concerning sexual equality and sexual and reproductive rights is more strongly related to the role of the Catholic Church than to the characteristics of the political systems in the regions in terms of their democratic or non-democratic nature. See Mala Htun, *Sex and the State: Abortion, Divorce, and the Family under Latin American Dictatorships and Democracies*, Cambridge, Cambridge University Press, 2003.

To illustrate these arguments I will use the case of the judicial reform of criminal legislation on abortion pursued by the NGO Women's Link. I will start by proposing how the "liberalization" framing that Women's Link supported, while explicitly geared towards avoiding confrontation with Catholic Church authorities, ended up cornering Women's Link in the need to justify the violation to the value of (or right to) life implicated in the voluntary termination of a pregnancy according to Catholics, and inviting attacks by a mass of highly sophisticated, resourceful, and even dangerous pro-lifers that lacked the public visibility of the Catholic Church as an institution and consequently was harder to track down, understand and confront.

I will then suggest ways in which the imperatives of free will and autonomy that operate when considering the regulation of "private" corporations, individuals or practices, have proven to be very useful to the Colombian Catholic Church for circumventing the sex and sexual democratizing policies and practices that the State promotes. In particular, I will point out how clinics and hospitals owned by the Catholic Church have avoided supplying gynecological services to women requesting the termination of their pregnancies in situations recognized as requiring the liberalization of abortion regulation.

## **1. Liberalization and the right to life**

In January 2005, the NGO Women's Link Worldwide set out to reform penal legislation on abortion in Colombia through a high impact litigation strategy that it named LAICIA (the Spanish acronym for High Impact Litigation for the Unconstitutionality of Abortion in Colombia). The project was oriented towards reaching three main objectives: a) liberalizing criminal legislation on abortion; b) changing the perception of abortion regulation in public

opinion; and, c) teaching local NGO's strategies for engaging with the judiciary. For this, it articulated a legal strategy that included presenting a public action before the Constitutional Court demanding the repeal of the articles in the Penal Code that established sanctions for women and doctors performing abortions; a network building strategy that involved contacting NGOs around the country that had historically been engaged in sexual and reproductive rights activism; and a public opinion strategy focused on obtaining support from academics and positioning a framing of the issue of abortion that emphasized sexual and reproductive rights and sexual health arguments as opposed to moral arguments.<sup>4</sup>

At the heart of the framing strategy was the use of the expression “liberalization,” as opposed to the more common “free choice,” “my body for me,” “decriminalization,” or “legalization” framings. Mónica Roa, the main spokesperson and mastermind of the project, has explained that choosing “liberalization” and not these other framings was important to: a) emphasize that the strategy was defending a very moderate stance in the sense that it would consider a triumph any change in the criminal legislation reducing the instances or the length of sentences; b) emphasize that the moderate stance was warranted in a country like Colombia because of its very harsh legislation (“Only 4% of the world’s population lives in countries where abortion is completely forbidden. Colombia is one of them”<sup>5</sup>); c) avoid the trap of the choice-life confrontation, which in the case of the United States had proved to render more difficult to obtain greater equality for women through liberalization of abortion laws; and, d) avoid engaging the moral confrontation suggested in the traditional framings.<sup>6</sup>

---

<sup>4</sup> Isabel Cristina Jaramillo Sierra and Tatiana Alfonso Sierra, *Mujeres, Cortes y Medios: La reforma judicial del aborto*, Bogotá, Siglo del Hombre Editores y CIJUS, 2008.

<sup>5</sup> *Ibid.*

<sup>6</sup> Isabel C. Jaramillo Sierra y Tatiana Alfonso Sierra, *op.cit.*, pp. 15-45.

Women's Link made sure that the strategy was guided by these convictions beyond the mere use of the term liberalization. In their legal strategy this was accomplished in four ways. First, although the two lawsuits that Women's Link eventually had to bring before the Court included a general demand for the abolition of the criminalization of abortion,<sup>7</sup> the substantive arguments presented only sustained the subsidiary (in the second case, alternative) claim of repealing the criminal prohibition of voluntarily interrupting a pregnancy in cases of grave endangerment of life and health of the pregnant woman, severe malformations of the fetus or pregnancies resulting from rape or non-authorized artificial inseminations. Second, Women's Link made sure that some individuals presented *amicus curiae* before the Court defending the need for more structural changes in the regulation of motherhood.<sup>8</sup> Third, Women's Link focused on the existing international law concerning the regulation of abortion in the first lawsuit, which implied already that it recognized to have solid ground for a very small change in the legislation.<sup>9</sup> Fourth, Women's Link was willing to follow carefully the Constitutional Court's "technical" demands in order to achieve *any* change in the legislation although there were good reasons to contest the Court's first ruling and to insist on the arguments of the first lawsuit.<sup>10</sup>

---

<sup>7</sup> Mónica Roa submitted an initial lawsuit before the Court on April 15, 2005. The Court declared that it could not decide on the merits of the case because of a technical flaw in the suit. Sentencia de la Corte Constitucional colombiana C-1299 de 2005, majority opinion by Álvaro Tafur Galvis, dissenting opinions by Jaime Araújo Rentería, and Marco Gerardo Monroy Cabra and Rodrigo Escobar Gil. In the press release issued by the Court on December 7, 2005, it explicitly stated that: "The Court admonishes that these [the inhibitory decisions] do not prevent citizens from presenting public actions against this article of the penal code in the future." p. 1. (translation by the author) Corte Constitucional colombiana, Comunicado de Prensa sobre las Sentencias relativas al Aborto, diciembre 7 de 2005, República de Colombia. Mónica Roa presented a lawsuit following the Court's recommendations on December 15, 2005. The Court decided on the merits of the case in Sentencia de la Corte Constitucional colombiana C-355 de 2006, majority opinion by Jaime Araújo Rentería and Clara Inés Vargas, dissenting opinion by Marco Gerardo Monroy Cabra and Rodrigo Escobar Gil, concurring opinions by Jaime Araújo Rentería and Manuel José Cepeda Espinosa.

<sup>8</sup> Isabel C. Jaramillo Sierra y Tatiana Alfonso Sierra, *op.cit.*

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

In the network building strategy the moderate approach also had specific consequences. On the one hand, Women's Link contacted and used the sexual and reproductive rights networks, as well as the Colombian feminist network, to find support, but it publicly emphasized that this was not a feminist issue and it proactively sought to build bridges with other movements and with opinion shapers and elites.<sup>11</sup> On the other, Roa explicitly decided to not engage or approach in any way radicals in the prolife camp having determined that this would be a waste of time.<sup>12</sup>

Finally, in the media strategy, Women's Link and its media consultants devised a script that would be at once clear and persuasive for the general public, and centered on the public health and international law dimensions of the strategy. This translated into a set of key messages emphasizing Colombia's international obligations regarding sexual and reproductive rights, the relationship between illegal abortions and maternal mortality, and the backwardness of Colombia's excessively harsh legislation.<sup>13</sup> In addition, it meant that Mónica Roa, as the main spokesperson, was instructed to never engage the moral arguments and never answer directly or indirectly questions about the Catholic Church, Catholicism or the right to life.<sup>14</sup>

Notwithstanding the precautions and calculations, Mónica Roa ended up needing State appointed bodyguards because of the seriousness of the death threats she received and the attacks on her property clearly meant to intimidate her,<sup>15</sup> was forced to change the gravitational center of her legal claims from equality to dignity, health and life,<sup>16</sup> and fell short of persuading the Court that the value/right to life should not be at the heart of our legal understanding of the issue of

---

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

abortion and consequently that criminalizing the voluntary interruption of pregnancies is generally defensible under the Colombian Constitution. As I already pointed out, I believe that to a large extent the strategy partially failed because it unnecessarily focused its strategy on repressive rules that the Catholic Church has targeted as needing protection and because it expected the Catholic Church to operate through its official channels and not through the sometimes dark, sometimes simply not explicitly articulated, maneuvers of affiliates that did not openly claim their relationship to the Catholic hierarchy.

#### **a. From equality, to dignity, to the right to life**

In the 14 months that the LAICIA project lasted, Women's Link had to change its legal argument for the liberalization of criminal legislation on abortion from one that centered on the right to equality to one that focused on human dignity.<sup>17</sup> Even though the Court used some of the international and comparative law arguments brought up by the plaintiff, and mentioned for the first time the “sexual and reproductive rights of women”, Mónica Roa's emphasis on international law and the shift to human dignity became the stepping stones to reframing abortion as an issue involving a confrontation of murderous women and innocent fetuses. In this sense, the Court reiterated the discursive strategy of its previous three decisions on abortion<sup>18</sup> and

---

<sup>17</sup> Isabel C. Jaramillo Sierra y Tatiana Alfonso Sierra, *op.cit.*

<sup>18</sup> Sentencias de la Corte Constitucional colombiana C-133 de 1994, majority opinion by Jorge Arango Mejía, dissenting opinion by Carlos Gaviria Díaz, Eduardo Cifuentes Muñoz y Alejandro Martínez Caballero; C-013 de 1997, majority opinión by José Gregorio Hernández, dissenting opinion by Carlos Gaviria Díaz, Eduardo Cifuentes Muñoz y Alejandro Martínez Caballero and partial dissent by Jorge Arango Mejía; C-198 de 2002, majority opinion by Clara Inés Vargas, dissenting opinion by Marco Gerardo Monroy Cabra, Rodrigo Escobar Gil and Álvaro Tafur Galvis.

reaffirmed the anti-liberalization choice for the “right to life” by, once again, starting with the conflict between the right to life/ value of life and the rights of women.<sup>19</sup>

These shifts in framing, as Tatiana Alfonso and I have argued, are not only relevant in the distant skies of legal concepts.<sup>20</sup> On the one hand, they reveal a patriarchal bias that makes the equality argument very difficult to articulate and understand, and which explains the somewhat arbitrary stubbornness of the Court when it comes to the legal construction of the constitutional issues involved in the regulation of pregnancy.<sup>21</sup> On the other hand, they allowed a reassertion of the grounds for limiting women’s control over their reproductive decisions.

Precisely because these shifts in framing were so predictable and led to such a restrictive view of the goals and the strategy, this otherwise exceptionally successful litigation<sup>22</sup> reminds us of the pitfalls of engaging in the reform of repressive rules when it comes to sex and sexuality: not only is the repression/licentiousness dualism a preferred trope of Catholics and religious zealots in general, but also accusing repressive rules of having particular distributional consequences that will be avoided if the prohibition is lifted is a device that can already be identified as possessing too many problems.

In the case of abortion litigation in Colombia, Women’s Link was emphatic in pointing out that in Colombia most of the risks to the health and life of women involved in voluntary interruption of pregnancies were directly related to the existence of a penal type punishing that

---

<sup>19</sup> The Court explicitly stated: “Such balancing requires identifying and pondering the rights in conflict with the duty to protect life, as well as appreciating the constitutional importance of the bearer of such rights, in these cases, the pregnant woman.” Sentencia de la Corte Constitucional colombiana C-355 de 2006, *op.cit.*, num. 7.

<sup>20</sup> See Isabel C. Jaramillo Sierra and Tatiana Alfonso Sierra, *op.cit.*

<sup>21</sup> We have even tried to identify the set of maneuvers that convince us of the necessity of this type of solution. *Ibid.*

<sup>22</sup> *Ibid*



conduct as abortion and it was also emphatic in pointing out that any liberalization of the legislation would reduce these risks. In addition it highlighted that Colombian legislation had no exceptions to punishment for voluntary interruption of abortion and was therefore one of the harshest legislations in the whole world.<sup>23</sup> These contentions overstate the role of this single rule both because they fail to take into consideration the rules on procedure, medical ethics and general criminal law that shape the ways in which the rule works,<sup>24</sup> and because they do not account for the restrictions under which women negotiate their reproduction generally.<sup>25</sup>

In particular, the representation by Women's Link distorted the cases and reasons for illegal abortions to justify moderate reform, and promised a change that has not materialized because of, among other things, this distortion: it simply was not true that many women were dying for want of access to abortion in the cases that were legalized.

## **b. Finding the “Catholics”**

The abortion case also demonstrated that even in the instances in which the Vatican has declared to have a particular interest, expecting the Catholic Church to formally appear as an institution in public forums in a leadership role of the mobilization against change can be deeply misguided.

---

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

In this instance of judicial review of penal legislation concerning abortion, the most formal Catholic intervention was an *amicus curiae* signed by every Colombian Archbishop in support of the anti-liberalization position.<sup>26</sup>

However, the anti-liberalization or prolife camp mobilized in several ways during the 13 months that it took to get a decision on the merits of the public action regarding abortion legislation and it is certainly possible to trace the relationship of the leaders of these actions to the Catholic establishment. In the judicial proceedings, Mónica Roa's claim for the repeal of some articles in the Penal Code was sabotaged, first, by the theft of some pages of the document to prevent the formal admission of the claim by the Justice to whom it was originally assigned (J. Álvaro Tafur Galvis); second, by requesting the annulment of the decision to admit the petition and then appealing the rejections; third, by submitting a lawsuit that was almost identical to Roa's and getting it assigned to the most conservative Justice in the Court; fourth, requesting that every progressive Justice step down and not participate in the decision because of their bias in favor of liberalization.<sup>27</sup> In addition, in the second round, they managed to obtain expert testimony of Harvard and Yale professors, psychologists, and medical doctors, as well as the signatures of professionals supporting the anti-liberalization position.<sup>28</sup>

---

<sup>26</sup> Sentencia de la Corte Constitucional colombiana C-355 de 2006, *op.cit.* The Catholic Church has only intervened officially in two other cases before the Court. The Conference of Bishops presented a request to prevent Justices Carlos Gaviria Díaz and Antonio Barrera Carbonell from participating in the decision about the annulment of the Constitutional Court's ruling on euthanasia that was denied in the Auto de la Corte Constitucional Colombiana 022 de 1997. Monsignor Pedro Rubiano, in the name of the Conference of Bishops, gave expert testimony on the difference between civil and religious divorce and on the possibility of splitting the civil and religious consequences of marriage upon demand by the Court itself. Sentencia de la Corte Constitucional colombiana C-074 de 2004, majority opinion by Clara Inés Vargas, dissenting opinions by Marco Garardo Monroy Cabra and Roberto Escobar Gil, and by Álvaro Tafur Galvis.

<sup>27</sup> Isabel C. Jaramillo Sierra y Tatiana Alfonso Sierra, *op.cit.*, pp. 56-70.

<sup>28</sup> *Ibid.*, pp. 60-76.

Legal strategy for the anti-liberalization camp was coordinated by Aurelio Ignacio Cadavid, the individual who presented the petitions before the Constitutional Court, and Ilva Myriam Hoyos, who articulated the expert interventions and *amicus curiae*. Cadavid was appointed by John Paul II as a member of the Pontifical Council for the Family and is a member of Human Life International and the Latin American Center for the Family.<sup>29</sup> Ilva Myriam Hoyos has not only served as the Dean of the Law School at the Universidad de la Sabana, owned by *Opus Dei*, but also participates by invitation in events organized by the Vatican.<sup>30</sup>

Outside of the legal proceedings, both Catholic Church officials and affluent Catholics used their resources and influence to get their anti-liberalization message across. The two most visible interventions of the Catholic Church hierarchy were a request made to President Álvaro Uribe not to sign the optional protocol to CEDAW because it would force Colombia to liberalize abortion legislation, a request that was made public by the media,<sup>31</sup> and the excommunications it decreed against doctors who agreed to perform abortions in the cases legalized by the Constitutional Court, particularly in the case of rape.<sup>32</sup>

---

<sup>29</sup> See Cadavid's profile in the web page that was set up for his campaign to the Senate in 2006. He was not elected: <http://aureliocadavid.com/CMS/index.php?option=content&task=section&id=3&Itemid=28>

<sup>30</sup> She was in the Vatican's official list for the Fifth Conference of Latin American Bishops that met in Brazil in 2007. See: <http://6865.blogcindario.com/2007/04/03122-lista-de-participantes-de-la-v-conferencia-del-episcopado-latinoamericano-y-del-caribe.html>

<sup>31</sup> Isabel C. Jaramillo Sierra y Tatiana Alfonso Sierra, *op.cit.*

<sup>32</sup> On August 31, 2006, Cardinal Trujillo announced that the doctors that performed an abortion on an 11 year old raped by her stepfather had been excommunicated *ipso facto* because this is one of the cases mentioned by the Canon Law Code. See: <http://www.aciprensa.com/noticia.php?n=13873>. This sanction today is far from being as important as it was among Colombians up until 1957, when it could mean becoming fair game for Conservative extremists. See Fernán González, *Poderes Enfrentados: Iglesia y Estado en Colombia*, Bogotá, Cinep, 1997. But it still is social important in smaller and traditionally conservative cities and has chilled some of the efforts to guarantee that women have access to legal abortions in Colombia. Personal interview with Mónica Roa, March 31, 2009.

Then again, the largest single expense was the advertisement for the anti-liberalization position that José Galat took out in the newspaper with the largest national circulation. José Galat also has a very close relationship to the Catholic Church.

On the ground, Catholics mobilized in three ways. First, teachers at Catholic schools all around the country, particularly in the most conservative cities, organized to ask their students to write letters to the Constitutional Court explaining that abortion was homicide.<sup>33</sup> Second, priests were instructed to collect signatures supporting the anti-liberalization position after mass.<sup>34</sup> Third, individuals in the anti-liberalization camp were informed of invitations to proliberalization lectures in events organized by the opposition so that they could protest in otherwise academic venues.<sup>35</sup>

Finally, extremists in the anti-liberalization camp sent Mónica Roa death threats serious enough for the government to assign her bodyguards, and ransacked her apartment to steal her computer and daily planner.<sup>36</sup> It remains unclear who exactly are these extremists as they did not identify themselves in any way.

## **2. How going private could be enhancing Catholic power**

To begin to understand how Catholic power operates under the conditions of separation of Church and state and the guarantee of freedom of religion, it could be useful not only to trace the myriad of rules that still explicitly single out Catholicism and give privileges to parishes, priests, nuns, convents, the Conference of Bishops and even the Vatican, but also to consider the

---

<sup>33</sup> Isabel C. Jaramillo Sierra y Tatiana Alfonso Sierra, *op.cit.*

<sup>34</sup> *Ibid*

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

effect of the structuring concepts of autonomy of the will and freedom of action in enabling the Catholic Church and individual Catholics to avoid complying with the guarantee of constitutional rights.<sup>37</sup>

In Colombia, particularly, notwithstanding the fact that individual citizens can submit requests for abstract judicial review of laws and administrative acts before the Constitutional Court and the State Council, and in fact have submitted many such requests, there are still some laws and regulations that privilege the Catholic Church. Law 119 of 1994, for example, establishes that the board of directors of the national institution in charge of technical education (SENA) shall include a representative of the Conference of Bishops. Law 434 of 1998, furthermore, establishes that the National Council for Peace shall also include a representative of the Conference of Bishops. Decree 4313 of 2004 provides that the Colombian State may contract missions with the Catholic Church, even if law 115 of 1994 establishes that Indian communities should be in charge of providing for the ethno-education of their children. Decree 1175 of 1991 suspends the Catholic Church's duty to pay taxes while the Concordat is renegotiated.

But these, I think, are the easy cases. It is harder to track down, but also to do away with, the effects of “moving” religion to the realm of the private. Firstly, because once religion enters the realm of the private it gains a sort of invisibility and anonymity that is not characteristic of the heavily pressed for transparency realm of the public. Secondly, because the arguments attached to the mechanism of the public/private distinction make it very hard to defend particular rules for religion and thus reveal the general limitations of the distinction.

---

<sup>37</sup> The idea that separating Church from State might enhance Catholic power rather than taming it was quite common among nineteenth century Colombian liberals. For this reason, they favored the model of tuition or control of the Church by the State. See, Fernán González, *op.cit.*, and Ricardo Arias, *El Episcopado colombiano: Intransigencia y Laicidad (1850-2000)*, Bogotá, CESO, Ediciones Uniandes, ICANH, 2003.

The abortion case, again, is useful in illustrating how this works in a concrete instance. In this case, it has become clear that enforcing the duty of health care providers to offer legal abortions becomes more difficult when the health provider is not a public institution for at least two reasons that are of interest to this argument. The first reason is that public inspection and supervision of the activities of private health care providers works through the initial process of licensing and in response to complaints of users. This means, specifically, that private health care providers are not obliged to report their activities and that verifying whether or not they are complying, requires the state to invest sizable resources in investigating each health care provider.

The second reason is that users have few incentives to present complaints against private health providers because the administrative remedies do not include reparations (only fines recoverable by the state and not by the injured party) and because as private persons they are judged with more stringent liability rules than the state and by judges who tend to be more pro-defendant than those who decide cases in which the state is the defendant.

The private health care providers that are using these loopholes to refuse legally permitted abortions, it bears noting, are those that are owned outright or in large part by the Catholic Church. The point is that they are not even forced to admit this in order to evade their legal obligations.

## Conclusions

I have argued in this paper that in the current debate concerning the Catholic Church and the protection of sexual and reproductive rights we might have overemphasized the role of legal prohibitions in shaping sex and sexuality and establishing power and resources to negotiate them while underemphasizing the role of legal privileges and powers that enable the Catholic Church to participate in these processes.

Using the case of the abortion litigation in Colombia I have defended that centering on criminal legislation and liberalization as a project not only limits our understanding of the way in which legal rules construe motherhood, sexuality and sex equality, but also frames the issue as a conflict of rights that demands balancing to respect the rights of all those involved. Balancing in the Colombian case meant in the end that only cases in which continuing the pregnancy amounted to heroic sacrifice could be recognized as instances of exception for the general rule of criminal liability for the interruption of a pregnancy.

I also sustained that to understand the role of Catholicism in the abortion case it was important to keep an eye on the informal ways of putting pressure on the individuals involved in the process and on the legal rules and legal arguments that could be rendering these mechanisms effective.